requirements and ongoing analyses by the LECs and by NECA. The problem is that NECA has no reason to break down any tariff participant's customer profile between primary residence and single-line business lines, additional lines, additional residence lines and all others, much less between primary residential lines and single line business connections.

2. SLC Charges Should Not Be Set to Penalize More Efficient Use of Existing Copper Loop Facilities

The Commission also seeks comment (¶¶68-70) on how SLCs should be applied to ISDN lines. Alternatives range from charging a SLC for each voice grade channel to charging a single SLC for each underlying loop. TDS Telecom urges the Commission to assess only one SLC charge on a BRI ISDN line and no more than two on a PRI ISDN line. The principle of matching charges to the way costs are incurred (see, e.g., ¶59) would conflict with assigning multiple SLCs when the traditional loop is upgraded to provide more value. The extra cost of the added capability to support ISDN is all that is caused by the ISDN service, certainly not the cost of installing enough lines to provide the service using separate loops. The SLC charge computation should not penalize carriers and customers for more cost effective use of the network.

C. The TIC Charge Recovers Real Costs and Provides Real Revenues that Can Lawfully Be Recovered Through Other Charges, But Not Simply Eliminated

The NPRM requests comment on how to recover the costs now recovered in the TIC charge in light of the judicial finding that the charge had not been sufficiently explained. It has in mind recovering parts of the costs now in this element as part of other access and signaling charges. It proposes (e.g. ¶122) to apply whatever changes it adopts to both ROR and price cap

LECs. However, it proposes (e.g. ¶118-120) phasing out portions of the charge that are not relocated in other charges. While shifting the costs for recovery elsewhere to reflect how they are incurred is lawful, TDS Telecom opposes any proposal to eliminate all or part of the TIC, whether in a flash cut or through a transition plan.

The TIC charge represents real costs that the LECs have already incurred. That the TIC charge has not passed judicial muster as an appropriate regulatory tool to recover this bundle of costs does not mean that any part of the costs has been disallowed. Even if, as some allege, the TIC includes cost allocation errors stemming from both the access charge rules and the jurisdictional separation rules, the costs are nonetheless real. That they may have been assigned in ways that are no longer reasonable or sustainable in the post-1996-Act environment cannot justify simply denying recovery for legitimately incurred costs. In other words, whatever method of recovering these costs the Commission chooses, there is no basis for writing costs off by regulatory fiat.

NECA has given careful consideration to how the costs now in the TIC can best be recovered by its pool members. TDS Telecom agrees with NECA's proposal, made in comments to be filed in this proceeding, for reallocating the TIC costs insofar as that is lawful in this proceeding. There is no need to burden the record by repetitive discussion here. NECA's proposal shows how a substantial part of the TIC costs can and should be transferred into appropriate transport or other rate elements for recovery.

TDS Telecom also agrees with NECA that the Commission should continue the TIC or an alternative charge to recover the remaining TIC costs that cannot be reallocated outside a

Federal-State Joint Board proceeding because they require changing the jurisdictional separations provisions in Part 36 of the Commission's Rules. NECA has estimated the amount that would remain for its pool companies, after implementing the Part 69 reallocations it proposes, at $92.9 million, which it also believes could be recovered through modifications in separations procedures. The important conclusion for the Commission to reach here is that costs which this proceeding cannot reallocate should continue to be recovered through the TIC -- or an alternative such as bulk-billing to interexchange carriers -- pending resolution of separations issues.

D. Proposals for Modified Transport Rate Elements Should Meet a Cost-Benefit Test Before They Are Applied to Rate of Return LECs

The Commission proposes several other modifications to its transport access charge rules. These include establishing call set-up charges, allowing or requiring peak and off peak pricing, measuring mileage in two segments for tandem switched transport and charging for switching in a way that recognizes switching costs are not all usage sensitive.

The key issue for each proposal is whether the benefit to be realized by adopting the change will outweigh the costs implementing the proposed change. For example, peak and off peak pricing should be an option, for both ROR and price cap LECs, rather than a requirement. Each LEC needs to weigh the costs a change would impose on its billing process against the improvement in cost-based recovery. Similarly, each LEC should be allowed to evaluate whether adopting call set-up charges is worth the cost of implementation.

IV. THE COMMISSION MUST COORDINATE THE "INTENSELY RELATED" ISSUES IN ITS UNIVERSAL SERVICE, SEPARATIONS AND INTERCONNECTION PROCEEDINGS WITH ACCESS REFORM FOR ALL ILECS

A. The Commission Needs Concrete Information about a Detailed Universal Service Mechanism for Recovering High Costs to Determine that Any "Implicit" Support Squeezed out of Access Charges and Separations Is Made Explicit or Can Be Recovered Without Confiscatory Delays or Arbitrary Government-Mandated Write-Offs

It is clear from Congressional comment on recent increases in interexchange, cable and local exchange rates that the 1996 Act was never intended as a vehicle for raising rates.[22] Thus, the Commission should take seriously the commitment in section 254 to "quality service at just, reasonable and affordable rates," "reasonably comparable" rural and urban rates and services, nationwide access to "advanced telecommunications and information services," and federal universal service "support" that is "specific," "predictable" and "sufficient " to achieve the enacted universal service purposes. In TDS Telecom's view, that precludes empty reassurances here that high cost support will be sufficient whenever it is fully developed and validated for all LECs. The law also conflicts with prescribing a novel definition of costs without a painstaking factual record on the impact and reasons for determining that any resulting revenue reductions are consistent with Section 254 and the Constitution.[23] The law also precludes deciding universal service, interconnection or access issues, only to take inconsistent action in a later proceeding or in the upcoming separations reform proceeding, without reexamining the compromised earlier

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[22]Washington Post, M. Mills and P. Farhi, "This Is a Free Market? The Telecommunications Act So Far: Higher Prices, Few Benefits," Sunday, January 19, 1997, p. HO1, quoting Senators John McCain, Ernest Hollings and former Senator Larry Pressler. According to Senator McCain, "Every time I pick up a newspaper, it says cable rates are going up, phone rates are going up, other service rates are going up."

[23]See, n. 9, supra (citing LECs' demonstration in the Eighth Circuit "interconnection" cases that denial of actual cost recovery amounts to an unconstitutional "taking.")

decisions. And it precludes unsupported presumptions that ILECs can turn to state rates to make up any jurisdictional cost shift, lost universal service support or access revenue reduction. Finally, for ROR LECs, in particular, the Commission cannot assume any excess interstate recovery. The NECA pooling process and rules provide for monitoring and adjustments to keep interstate rates accurately targeted to recover actual reported costs.

Owing to the need for careful analysis of all proposed access charge changes and their effects, taking into account all interrelated changes, the Commission's speculation that some current access charges could involve "double" recovery (¶244) is, at best, premature. The Commission should not count on universal service support (e.g. ¶246) when the basic parameters of the mechanisms are still to be devised and validated. The Commission must find the time to compute the impact when the new federal universal service mechanism is "done." The crucial point here is that the Commission must be able to calculate the "bottom line," cumulative, impact of its many related proceedings before it terminates or phases out existing cost recovery revenue streams.

B. The Commission Should Account for Interstate Support on the Basis of Each Mechanism's Purpose

The Commission should not simplistically view (¶246) interstate support flows as offsets to interstate revenue requirements. Insofar as frozen transitional support is concerned, the existing mechanisms have distinct purposes and results. DEM Weighting is designed to provide adequate interstate cost allocations and, consequently, adequate revenues for NECA pool members and other ROR LECs whose "small" switches result in higher costs per line or per minute than larger switches serving denser areas. It should continue to be treated as an interstate revenue flow that covers costs purposely allocated to interstate.

Current high cost support funded via the Universal Service Fund is based on total unseparated loop costs. The formula then calculates an amount -- i.e. an "expense adjustment" that goes beyond the 25% gross interstate allocator. That interstate-allocated expense is then recovered via interstate revenues, which are used to keep local and intrastate rates in line.

Long Term Support is designed to provide adequate interstate revenues to allow the NECA Carrier Common Line access charges to be set at levels reasonably close to the national average for ILECs. Frozen Long Term Support should continue to be treated as an interstate revenue stream for the NECA Common Line pool.

These frozen support mechanisms operate through the separations process. The process automatically offsets interstate revenues against interstate-allocated costs, thus using jurisdictional allocations to prevent higher local and intrastate revenue requirements and rates. Accordingly, they must remain at the current balance between interstate-assigned costs and interstate revenues to maintain the intended frozen support flows until separations reform is complete.

Revenues from new federal universal service support mechanisms should be used first to offset existing "implicit" support that the new program must now make "explicit." The 1996 Act requires "sufficient," "explicit" federal support to satisfy the universal service purposes in section 254. The universal service, interconnection, access charge and separations proceedings must be coordinated so that the resulting comprehensive new policy package can be found to achieve rural and urban price and service comparability and the other universal commitments in section

254. In any, there is no reason to presume that "federal universal service support" causes over-recovery unless it is substracted from whatever "interstate" cost allocations are then in effect.

C. Separations Changes Must Be In Harmony with Universal Service Results

The Commission's plan to re-evaluate the Jurisdictional Separations Manual (47 C.F.R. Part 36) in view of the 1996 Act makes sense, although it probably should have been started in the Universal Service Joint Board. As illustrated in the previous section, separations have long been a lawful tool for accomplishing universal service goals.[24] That is still the case, as long as the separations-based mechanism is "explicit," like, for example, the existing "expense adjustment" mechanism that calculates ILEC USF support.

As with any other changes, the Commission must not simply terminate separations-based "implicit" support. It must inform itself on how the cost will be recovered in the future.

V. A MODIFIED MARKET APPROACH WILL BE NECESSARY TO ACCOMMODATE THE WIDE RANGE OF CONDITIONS IN THE RURAL AND URBAN AREAS SERVED BY PRICE CAP LECs

The hope of tackling most ROR access issues separately does not leave the Commission free to ignore all but urban markets in the price caps access reform phase. Most of the price cap LECs serve some rural areas. While these large LECs are better equipped to survive regulatory mistakes, the Commission still has the responsibility for avoiding price cap policies that will prejudice rural consumers, even at this stage of its bifurcated access charge reform schedule. The

[24]Rural Telephone Coalition v. F.C.C., 838 F.2d 1307, 1314 (D.C. Cir. 1988), quoting from MCI Telecommunications Corp. v. FCC, 675 F.2d 408, 416 (D.C. Cir. 1982): "where 'there is no purely economic method of allocation . . . elements of fairness and other non-economic values inevitably enter the analysis of the choice to be made.'"

Commission seeks comment (¶¶161-240) about whether to pursue a "Market Approach" to access reform or a course involving greater regulatory intervention, which it calls the "Prescriptive Approach." The truth is, however, that both approaches involve heavy regulatory intervention in the operation of telecommunications markets. Despite its frequent quoting (e.g., ¶ 1) of the legislative purpose underlying the 1996 Act, "to establish 'a pro-competitive, de-regulatory national policy framework,' for the United States telecommunications industry." All of the Commission's implementation decisions to date have evidenced the Commission's reluctance to let go of regulation in favor of marketplace forces.

A. Congress Intended Minimal Market Interference Consistent with a Location-Appropriate Transition to Competition

The Act and legislative history abound with indications that Congress had much greater faith in deregulation than the Commission has demonstrated. For example, section 10 of the Act provides for mandatory lifting of Commission rules and statutory requirements if specified tests are met. These tests focus most heavily upon the impact of deregulation on consumers. The Commission is to determine whether the regulatory intervention is necessary to ensure "just and reasonable rates," to protect consumers or in the public interest. Only in the case of a public interest finding does the Act note that an increase in "competition" should be given weight. Laws that are not necessary for one of the stated reasons may not be kept on the books.

In sharp contrast with the deregulatory themes in the Act, the Commission's analysis of whether and how much flexibility to allow for LECs to make their own access charge decisions focuses on the market success of incumbents' competitors. There is virtually no evaluation of the impact of the price cap access reform proposals on consumers. Moreover, the underlying presumption of the NPRM is that regulation of incumbent LECs should be retained and even increased to force-feed incumbents the Commission's conception of how marketplace pricing should look. This strong-arm view of regulating marketplace competition into place is obvious in the Prescriptive Approach: The Commission would simply decree that price cap ILECs must price access to recover only government-defined TSLRIC costs. The force of regulation is only slightly more subtle in the Market Approach, however. The test proposed there for when each phase of "competition" has been reached -- the precondition for each increment of regulatory relief for the price cap LEC -- is whether the ILEC has "voluntarily" implemented essentially the same price and cost regime. The implication is that only if the Commission controls and referees from the sidelines can competition be trusted to function as predicted in economics texts and to do so on the expedited schedule the Commission desires.

Curiously, for interstate interexchange services, the Commission has recently declared victory for the competitive marketplace and granted the incumbent, AT&T, enormous regulatory flexibility. The Commission did not condition getting or keeping flexibility on government-selected cost and pricing results. Since AT&T, MCI and Sprint almost immediately raised their rates,[25] and have historically adjusted their prices almost simultaneously, it seems unlikely that interexchange competition policy has driven any of their prices to LRIC, TELRIC or any other theoretically "competitive" cost level. Perhaps interexchange carriers would be less vocal in demanding TSLRIC prescription for ILECs if they were subject to the same prerequisites.

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[25] See, Communications Daily, "AT&T Raises Rates 5.9% on Residential Long Distance, MCI 4.9%," pp. 1-2 (Friday, November 29, 1996).

Congress did not ask or expect the Commission to manhandle the market into competitive equilibrium. The Commission should give the Act a chance, reduce government micromanagement of LEC access pricing, reject any increased access regulation unless it can pass the statutory test for forbearance and seek a transitional approach that makes room for carrier business judgments and negotiations. Only where there is a strong indication that the marketplace is not maintaining just and reasonable rates, protecting consumers and advancing the public interest by developing genuine market-made competition -- not regulatory, man-made competition -- should the Commission cast itself as competition's spokesperson.

B. The New National Policy Environment Requires the Commission to Let Incumbents Compete Before Uneconomic Bypass Occurs

Another reason the Commission should look for a less intrusive approach than either its Prescriptive or its Market Approach is that too much regulatory interference to ease entry and promote market success by new providers will not leave room for a truly competitive market to emerge. Instead, regulatory handicapping can give rise to "reliance" claims from "competitors" that have been able to enter profitably because the ILECs' competitive responses are artificially blunted by regulation. The Commission has heard before the demands for continued intervention from "competitive" carriers that have grown to depend on regulatory intervention to hold their own in the "marketplace."[26] Indeed, the Commission may be confronting just that problem in the NPRM when it expresses its reluctance to treat the Internet and other enhanced service

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[26] See, Remarks of Albert Halprin, Chief of the FCC's Common Carrier Bureau, to the Financial Analysts Federation (delivered June 10, 1985) (criticizing companies that claim that they will be ruined without continued FCC intervention).

providers like other users of the public switched network, in large part because of "potentially detrimental effects on the growth of the still-evolving information services industry" (¶ 288).[27]

VI. CONCLUSION

The Commission should recognize the unavoidable linkages both (a) between access charge relief for rate-of-return and price-cap LECs and (b) among the implementation "trilogy" of issues -- universal service, interconnection and access charges -- now expanded to embrace jurisdictional separations. The Commission cannot avoid the impact on rate-of-return LECs of the access charge proposals it is considering for price-cap LECs simply by delaying its rate of return access proceeding. The challenges of the transition to competition will inevitably affect rate-of-return LECs left without the ability to meet competition. Nor can the Commission neglect to consider the effects of decisions regarding the other three sets of issues without sacrificing the balanced, harmonious, comprehensive policy package needed to carry out the intent of Congress in enacting the 1996 Act.

Therefore, TDS Telecom urges the Commission to respond to the needs of rate-of-return LECs by:

1. Carefully considering how its price-cap access proposals will affect rate-of-return LECs;

2. Including rate-of-return LECs in a lawful program to permit recovery of historic costs

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[27] The NPRM admits (¶ 285) that had enhanced service providers had the same rates as other network providers, it is likely that "the Internet and other information services would not have developed to the extent the have today — and indeed may not have developed commercially at all. "Unfortunately, if fostering policies shape the industry uneconomically, the chance for a long term commercially viable and economically efficient industry may be undermined.

incurred in reliance on traditional public utility law;

3. Recognizing that the rate-of-return LECs, too, have an immediate need for flexibility to compete;

4. Rethinking its rate structure and access charge applicability proposals to maintain appropriate interexchange carrier cost recovery responsibility;

5. Evaluating all access charge reform proposals and related separations, interconnection and universal service rules under the result-oriented universal service standard of section 254, including its commitment to reasonable rural and urban rate and service parity;

6. Adopting SLC and TIC reforms only if they adequately recover actual LEC costs and provide actual efficiency benefits; and

7. Shaping its access and interrelated rules to promote universal service, genuine competition and less intrusive, market distorting regulatory interference in incumbent carrier pricing decisions and competitive responses.

Respectfully submitted,

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January 29, 1997

CERTIFICATE OF SERVICE

I, Weldrena Jones-Bean, do certify that on this 29th day of January, 1997, two copies of the foregoing "Comments of TDS Telecommunications Corporation" were served, by hand delivery, on the following:

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/s/ Weldrena Jones-Bean
Weldrena Jones-Bean